

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 567 (Sub-No. 2X)

RUTHERFORD RAILROAD DEVELOPMENT CORPORATION—ABANDONMENT  
EXEMPTION—IN RUTHERFORD COUNTY, NC

Decided: January 15, 2016

Rutherford Railroad Development Corporation (RRDC) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 4.97 miles of rail line, between milepost SB 175.5 near Alexander Mills and milepost SB 180.47 in Spindale, together with a portion of the Bostic Spur, which runs from approximately the northern right-of-way line of U.S. 74 Business, a distance of approximately 2,441.4' westerly to a point at or near Rail Milepost SF-407.40 and Rail Valuation Station 5343+22, in Rutherford County, N.C. Notice of the exemption was served and published in the Federal Register on December 18, 2015 (80 Fed. Reg. 79,132).<sup>1</sup> The exemption is scheduled to become effective on January 19, 2016.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on December 24, 2015. In the EA, OEA states that the North Carolina Department of Environmental Quality (NCDEQ), Division of Coastal Management submitted comments requesting RRDC to perform a Phase I environmental site assessment on the property to determine whether any contamination from historical pesticide application, fuel or chemical leaks, or other rail activities on the line is present that may pose a threat to human health or the environment and submit the resulting report to NCDEQ for review. Additionally, NCDEQ reminded RRDC of its duty to report any known environmental contamination and investigate any suspected environmental contamination. Accordingly, OEA recommends that a condition be imposed that, prior to commencement of salvage activities, RRDC shall consult with NCDEQ to determine if any known environmental contamination is present within the right-of-way.

Comments to the EA were due January 8, 2016. No comments were received. Accordingly, the condition recommended by OEA in the EA will be imposed.

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<sup>1</sup> Southeast Shortlines, Inc. d/b/a Thermal Belt Railway joined in filing this notice of exemption to obtain Board authorization to discontinue service over the same rail line segments. Se. Shortlines, Inc. d/b/a Thermal Belt Ry.—Discontinuance of Service Exemption—in Rutherford Cty., NC, AB 568 (Sub-No. 2X).

In the EA, OEA also states that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On December 22, 2015, the Town of Forest City (Town) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with RRDC for acquisition of the right-of-way for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, the Town submitted a statement of its willingness to assume financial responsibility for the right-of-way, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By response filed on December 23, 2015, RRDC has indicated its willingness to negotiate with the Town for interim trail use.

Because the Town's request complies with the requirements of 49 C.F.R. § 1152.29 and RRDC is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, RRDC may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The Town has also requested imposition of a public use condition under 49 U.S.C. § 10905. The Town asks that RRDC be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that RRDC be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. The justification for this request is that these structures have considerable value for recreational trail purposes. The Town states that the 180-day period is needed to begin negotiations with RRDC and to complete a trail plan.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the Town has satisfied these requirements, a 180-day public use condition will be imposed, requiring RRDC to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from the January 19, 2015 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while trail use and public use conditions will be imposed at this time, the public use condition will expire on July 17, 2016, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until July 13, 2016. If a trail use agreement is reached on a portion of the right-of-way prior to July 13, 2016, RRDC must keep the remaining portion of the right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, RRDC is not required to deal exclusively with the Town, but may engage in negotiations with other interested persons.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on December 18, 2015, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the Town to negotiate with RRDC for trail use for the above-described right-of-way, for a period of 180 days from the service date of this decision and notice, until July 13, 2016, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the January 19, 2016 effective date of the exemption, until July 17, 2016. The abandonment is also subject to the condition that, prior to commencement of salvage activities, RRDC shall consult with NCDEQ to determine if any known environmental contamination is present within the right-of-way.
3. Consistent with the public use and interim trail use/rail banking condition imposed on the above-described right-of-way in this decision and notice, RRDC may discontinue service and salvage track and related materials. RRDC shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days until July 17, 2016, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.
4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any

potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use of the right-of-way, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by July 13, 2016, for the right-of-way, interim trail use may be implemented. If no agreement is reached, RRDC may fully abandon the line.

9. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.